

## REMARKS/ARGUMENTS

Claims 1-5 and 7-28 are pending. Claim 6 is canceled. Claims 1-28 were rejected. Reconsideration and continued examination of this application is respectfully requested in view of the attached claim amendments and the following remarks.

### *35 U.S.C. §112 Rejections*

“When basing a rejection on the failure of the applicant's disclosure to meet the enablement provisions of the first paragraph of 35 U.S.C. 112, USPTO personnel must establish on the record a **reasonable basis** for questioning the adequacy of the disclosure....” MPEP § 2161.01 (emphasis in original).

Claims 1, 22, and 26 were rejected under 35 U.S.C. § 112 as failing to comply with the enablement requirement. Specifically, the Office Action asserted that the element “wherein the media content does not include a unique identifier that is derived from, inserted or embedded in the media content” is not enabled because several paragraphs of the Application describe possible embodiments in which the media content includes side-chain data or metadata that may be regarded as a unique identifier. For example, paragraph [56] begins, “[o]ne possibility is to use the side-chain or meta-data that is present in a number of Internet audio broadcasts” (emphasis added). Similarly, paragraph [71] begins, “[a]nother method is to insert a data signal....” Paragraph [55], which is said to discuss the use of side-chain data and metadata, actually discusses neither, instead merely stating the need to somehow identify information that describes a media content.

Nowhere does the Application **require** that the media content include any identifiers. Indeed, Claims 1, 22, and 26 are directed towards methods that use pattern recognition schemes to identify media content regardless of whether the content has a unique identifier. Paragraph [58] discusses such an embodiment: “Another method is to use pattern recognition techniques to identify the specific song.”

Thus, Applicant respectfully submits that the Office Action has not established a reasonable basis for questioning the adequacy of the disclosure. Applicant further

respectfully submits that Claims 1, 22, and 26, as previously amended, met the enablement requirement of § 112.

Nonetheless, Claims 1, 22, and 26 are presently amended merely to further clarify that the claimed inventions operate regardless of whether the media content has a unique identifier. For example, the “identifying” step of Claim 1, as presently amended, reads as follows:

identifying, for each connected broadcast transmission, at least one characteristic of the media content associated with the connected broadcast transmission through a statistical pattern recognition scheme, **without the need for the media content to include a unique identifier** that is derived from, inserted or embedded in the media content

Applicant respectfully submits that Claims 1, 22, and 26, as presently amended, comply with the enablement requirement.

Although Claim 21 was not rejected under § 112, Applicant believes that “the step of classifying broadcast transmissions” in Claim 21 may lack a proper antecedent basis. Merely for clarification, Claim 21 is presently amended to bring it into accord with the terminology used in its parent claims. This amendment is not believed to alter the scope of Claim 21, being merely the correction of a clerical error.

### ***35 U.S.C. §103 Rejections***

To establish a *prima facie* case of obviousness, the Office has the burden to meet three basic criteria. First, the Office must show that there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the reference teachings. The teaching or suggestion to make the claimed combination must be found in the prior art, not based on applicant’s disclosure. Second, the Office must show that the teachings in the prior art have a reasonable expectation of success. Third, the Office must show that **the combined prior art references teach or suggest all the claim limitations**. *See* MPEP § 2142.

Claims 1-28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,748,237 to Bates (hereinafter “*Bates*”) in view of Published U.S. Application Pub. No. 2004/0199387 to Wang (hereinafter “*Wang*”). Claim 6 was previously canceled, so the rejection of Claim 6 is regarded as moot. However, Applicant respectfully submits that the Office Action has failed to meet its burden to show a *prima facie* case of obviousness and that Claims 1-5 and 7-28, as presently amended, are patentable over *Bates* in view of *Wang*.

Claim 1, as presently amended, reads as follows:

A method for a media agent to monitor multiple broadcast transmissions, each broadcast transmission containing media content, comprising:  
identifying the broadcast transmission to be monitored;  
establishing connections with the identified broadcast transmissions  
**identifying**, for each connected broadcast transmission, at least one **characteristic of the media content** associated with the connected broadcast transmission through a statistical pattern recognition scheme, **without the need for the media content to include a unique identifier** that is derived from, inserted or embedded in the media content; and  
maintaining the association between the identified at least one characteristic of the media content and the connected broadcast transmission.

The Office Action asserts that *Bates* teaches “identifying, for each connected broadcast transmission, at least one characteristic **of the media content** associated with the connected broadcast transmission,” as claimed in Claim 1. In support of this assertion, the Office Action cites to *Bates*’s discussion of Figures 4 and 5. However, like the rest of *Bates*, Figures 4 and 5 disclose merely that a characteristic of a **broadcast transmission** may be identified, not that a characteristic **of the media content** associated with the broadcast transmission may be identified, as claimed in Claim 1.

For example, *Bates* discloses that it is possible to “scan forward or backward through the current radio band to **locate a station** [i.e., a broadcast transmission, not media content] having a signal strength exceeding a minimum threshold.” Col. 6 lines 29-32. Similarly, *Bates* discloses that it is possible to “determine[] whether the station [i.e., broadcast transmission, not media content] signal strength exceeds another, higher threshold....” Col. 7 lines 20-21. Thus, the cited portions of *Bates* are directed almost

exclusively towards identifying a characteristic (signal strength) of a transmission station. Thus, Applicant respectfully submits that neither *Bates* nor *Wang* teaches or even suggests “identifying, for each connected broadcast transmission, at least one characteristic of the media content associated with the connected broadcast transmission,” as claimed in Claim 1.

Furthermore, the Office Action failed to assert that any piece of prior art teaches or suggests “identifying... at least one characteristic of the media content..., **without the need for the media content to include a unique identifier** that is derived from, inserted or embedded in the media content,” as claimed in Claim 1. Although the Office Action rejected Claim 1 under § 112 because of this element, Office Personnel are required to evaluate the claims under both § 112 and §§ 102-103. *See* MPEP § 2106 (Guidelines flow chart). Thus, the Office Action was required to evaluate this element under § 103 regardless of the fact that the Office Action rejected this element of Claim 1 under § 112. However, the Office Action did not show that the prior art teaches or suggests the element “identifying... at least one characteristic of the media content..., without the need for the media content to include a unique identifier...”

Because the Office Action failed to show that the combined prior art references teach or suggest all the claim limitations, the Office Action has not met its burden to show a *prima facie* case that Claim 1 is obvious over *Bates* in view of *Wang*.

Claims 22 and 26 each contain elements that are similar to those just discussed in regard to Claim 1. Therefore, Claims 22 and 26 are also allowable by similar reasoning.

Claims 2-5, 7-21, 23-25, and 27-28 depend from independent claims that have been shown to be allowable. Claims 2-5, 7-21, 23-25, and 27-28 are therefore allowable at least by dependency. However additional arguments exist for distinguishing Claims 2-5, 7-21, 23-25, and 27-28 from *Bates* and *Wang*.

For example, the Office Action failed to make a *prima facie* case that Claims 4 and 21 are obvious over *Bates* in view of *Wang*. The Office Action asserts that *Bates* Col. 7 lines 1-60 disclose “the statistical pattern recognition scheme is accomplished through an historical analysis of the media content associated with the connected

broadcast transmission,” as claimed in Claims 4 and 21. However, on page 3, the Office Action acknowledges that *Bates* does not teach or (implicitly) suggest a statistical pattern recognition scheme, an acknowledgement with which Applicant agrees.

Given that the Office Action admits that *Bates* fails to disclose any general embodiment of a statistical pattern recognition scheme, Applicant respectfully submits that the Office Action cannot assert that *Bates* discloses a specific embodiment of a statistical pattern recognition scheme, as the Office Action asserts in rejecting Claims 4 and 21. Therefore, Applicant respectfully submits that the Office Action has failed to state a *prima facie* case that Claims 4 and 21 are obvious.

*Bates* Col. 7 lines 1-60 is also said to disclose “re-establishing, **when a transition in media content is expected**, connections to the identified broadcast transmissions...,” as claimed in Claim 8. However, *Bates* teaches merely periodic reconNECTIONS to available stations, a disclosure that at best means merely that the monitor task may *respectively* detect that a transition in media content has already occurred. However, Claim 8 claims that a connection is re-established when such a transition is **expected**, “expected” being a verb that indicates a *prospective* regard that a future event is likely to occur. Neither *Bates* nor *Wang* teaches or even suggests such an **expectation** of a (future) transition. Therefore, Applicant respectfully submits that the Office Action has failed to state a *prima facie* case that Claim 8 is obvious.

Similarly, in addition to failing to teach or suggest the expectation of a transition, as discussed above, *Bates* in view of *Wang* fails to teach anything about a duration of media content, let alone that “the expected transition in media content is based on a **duration of the media content**,” as claimed in Claim 9. Therefore, Applicant respectfully submits that the Office Action has failed to state a *prima facie* case that Claim 9 is obvious.

Nor does *Bates* in view of *Wang* teach or suggest that “**recording** the broadcast transmission is performed **for the purpose of time-shifting**,” as claimed in Claim 19. On the contrary, the cited portions of *Bates* disclose merely that “the monitor task... **monitors** [not records] all available stations,” Col. 5 lines 45-46; that a scan routine “scan[s] forward or backward through the current radio band to **locate** [not record] a

station,” Col. 6 lines 29-31; and that a monitor task “is configured to periodically monitor [not record] all available stations,” Col. 7 lines 2-3. Indeed, *Bates* is directed towards “automat[ing] the **selection** [not the recording] of audio broadcast signals,” Col. 2 lines 33-34. As such, *Bates* teaches nothing about recording transmissions, let alone “**recording** the broadcast transmission is performed **for the purpose of time-shifting**,” as claimed in Claim 19. *Wang* fails to remedy this deficiency. Therefore, Applicant respectfully submits that the Office Action has failed to state a *prima facie* case that Claim 19 is obvious.

For at least the reasons above, Applicants respectfully submit that Claims 1-5 and 7-28 are allowable and request that the Examiner permit these claims to proceed to issuance. Although additional arguments are believed to exist for distinguishing the cited documents, the arguments presented are believed sufficient to address the Examiner’s rejections. Likewise, failure of the Applicants to respond to a position taken by the Examiner is not an indication of acceptance or acquiescence of the Examiner’s position. Instead, it is believed that the Examiner’s positions are rendered moot by the foregoing arguments, and it is therefore not believed necessary to respond to every position taken by the Examiner with which Applicants do not agree.

### CONCLUSION

Applicant submits that all pending claims are in condition for allowance. Accordingly, early and favorable action allowing all of the pending claims and passing this application to issue is respectfully requested. The Examiner is respectfully requested to contact the undersigned at the telephone number below if there are any remaining questions regarding this application.

We believe the appropriate fees accompany this transmission. If, however, insufficient fee payment or fee overpayment occurs, the amount may be withdrawn or deposited from/to AXIOS Law Group's deposit account. The deposit account number is 50-4051.

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